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**IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF WASHINGTON**

JEREMY OLSEN,)	
)	
)	DEFENDANT’S RESPONSE TO
Plaintiff,)	PLAINTIFF’S STATEMENT OF
)	MATERIAL FACTS
v.)	Case No. 2:20-cv-374 (SMJ)
)	
ALEX M. AZAR II, in his official)	Noticed: Jan. 7, 2021
capacity as Secretary of Health and)	
Human Services,)	Without Oral Argument
)	
Defendant.)	
)	
)	

1 Although this is an administrative record review case, for which no

2 statement of material facts is required, *see* L. Civ. R. 56(i), Plaintiff filed such a

3 statement in support of his motion for summary judgment. But “when a party

4 seeks review of agency action . . . , the district judge sits as an appellate tribunal.”

5 *Am. Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1083 (D.C. Cir. 2001). “The

6 ‘entire case’ on review is a question of law,” *id.*, and the “complaint, properly read

1 . . . presents no factual allegations, but rather only arguments about the legal
2 conclusion to be drawn about the agency action,” *Marshall Cnty. Health Care*
3 *Auth. v. Shalala*, 988 F.2d 1221, 1226 (D.C. Cir. 1993).

4 Because a statement of material facts was not required in this case, which
5 involves no factual disputes, the Secretary does not respond to Plaintiff’s
6 statement.

Respectfully submitted,

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/s/ James Bickford
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